

EIC Position Paper on “EU-Financed Infrastructure Projects in Africa”

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Introduction

Throughout the 20th century, infrastructure facilities and services in the transport, energy, water and sewerage sectors provided by European construction companies have made a significant contribution to the economic and social development of more than 150 countries on all continents. They have not only contributed to employment, income and taxation in the host countries, but have generally enhanced the European image abroad. Through the **co-operation with local suppliers and subcontractors**, the **transfer of technology and know-how** and the **training of the local workforce**, these companies have helped to create a climate for cross-cultural understanding as well as a potential for economic growth and thus made a contribution to what is nowadays labelled as “*Sustainable Development*”.

Since a number of years, however, many European international contractors have curbed bidding for infrastructure projects financed by international donor agencies, including the European Union. This has not gone unnoticed by some donors who have investigated into the underlying reasons for the limited interest of European companies in donor-financed infrastructure tenders. Whilst some observers suggest that European construction companies are not prepared to enter into international competitive bidding any longer because of a lack of competitiveness, such conjecture is simplistic and misconceived in the sense that it neglects a number of complex reasons underlying the limited appetite of European companies for donor-financed infrastructure tenders in developing countries, and in particular in Africa.

Conversely, the European construction industry has successfully managed to adapt itself to the era of globalisation by developing a strong presence in the more mature construction markets. The overall competitiveness of the European construction industry can be inferred from the fact that European contractors have increased their international revenues from 75 billion € in 2000 to some 121 billion € in the year 2007, whilst the share of revenues generated in Africa has stagnated at around 5%. The two most noteworthy factors for the decreasing presence of European contractors in Africa have a political background:

1. **A severe distortion of competition** between European contractors and their competitors from non-OECD countries which may operate free from **EU or OECD regulations on environmental, ethical, financial and social standards**. The unlevel playing-field is compounded in Africa through a massive influx of **Chinese “*tyed aid*” soft loans** and the **systematic subsidisation of Chinese state-owned construction companies**;
2. A shift of donor aid flows from Project Aid to **(Sectoral) Budget Support** and a policy to replace the internationally accepted Standard Bidding Documents for Works by national **Country Procurement Systems**. This trend is amplified by an evident **reluctance of the donor community to rigidly supervise the tender process for infrastructure works**.

Development Policy Considerations

In an effort to maximise the positive effect of development aid, 120 donors, partner countries and international organisations agreed in March 2005 on the so-called “*Paris Declaration*”. This accord stipulates that donors and partner countries shall become better at reporting results, partner countries shall take greater responsibility for their own development and donors shall improve co-ordination between themselves. Furthermore it was agreed that partner countries shall increase democracy to combat poverty and continue to implement economic and political reforms to strengthen their own administrative systems, whereas donors shall align their aid better to the conditions in each individual partner country.

From the private sector view, one of the most crucial consequences of the “*Paris Declaration*” is its practical implications for the donor-financed procurement process, as it is here where private companies are directly affected by the agreements of such international conventions. From the outset, EIC has expressed concern and discomfort that the international donor community has vowed in the “*Paris Declaration*” to “*use country systems and procedures to the maximum extent possible*” because, in our experience, increased use of Budget Aid and Country Procurement Systems inevitably lead to a watering down of relevant international procurement standards safeguarded presently by the Standard Bidding Documents for Works of the Multilateral Development Banks. EIC is further surprised by the EU’s seemingly unconditional disposition “*to channel 50% of government-to-government assistance through country systems, including by increasing the percentage of our assistance provided through budget support and sector-wide approaches*”, as expressed in the “*European Consensus on Development*” in November 2005. In addition, we were disappointed about the donor community’s decision to generally exclude the private sector from the dialogue at the “3rd High-Level Forum on Aid Effectiveness” in September 2008 in Accra where donors reaffirmed “*to use country systems as the first option for aid programmes in support of activities managed by the public sector*”.

Whilst EIC certainly supports the long-term goal to increase transparency and accountability in partner countries’ procedures, our actual experience in the field is that the introduction of such decentralisation policies in institutionally weak management systems may have the opposite effect and thus exposes European taxpayers’ money to the high risks connected with these procedures. Our reservations are confirmed by two recent studies on Effectiveness and Professional Integrity in the Consultancy Sector, commissioned by the World Bank, which come to the conclusion that the Bank should strive at amplifying its aspirations and standards for Quality, Integrity and Sustainability in the procurement for infrastructure works rather than leaving these crucial responsibilities to its borrowers. These studies found that an obvious effect of a flawed procurement system is the absence of experienced companies in the tenders. Against this background, EIC firmly supports the European Commission’s analysis, as expressed in EuropeAid’s “*Project Cycle Management Guidelines (Volume 1, at page 14)*” that “*donor managed projects might be a preferable aid mechanism where transaction costs are lower for the donor than for the partner government... [which] might be the case for large international tenders where the partner government does not possess the necessary capacity to effectively manage the overall contracting process*”.

In conclusion, EIC strongly suggests to the European Union to implement the EU-Africa Partnership on Infrastructure signed in Addis Ababa on 24 October 2007 through clearly defined and well prepared projects which are tendered in accordance with the General Regulations of the European Development Fund.

Sustainable Infrastructure Procurement in the context of the 10th European Development Fund

Over the past decades, the focus of tender procedures under donor-financed contracts has been focused solely on the lowest construction cost of an infrastructure facility rather than the optimisation of the project's life-cycle costs. The Practical Guide 2008 and the corresponding General Conditions regulate that the standard method of awarding works contracts is by means of an international open tender procedure where *“the successful tenderer is the one submitting the least expensive bid classified as technically compliant during the technical evaluation”*. It must be declared the successful tender if it is equal to or lower than the maximum budget available for the contract.

Whilst EIC has no principal reservations against the conventional tender process of awarding the contract to the lowest responsible bidder, we have to note at the same time that, despite the many practical guides and policy guidelines issued by the international donor agencies for the procurement of construction works, **there is an obvious gap between such tender regulations, which are in theory fair and transparent, and the actual implementation of the conventional tender procedures.** All too often, bidders complain about unclear tender specifications and provisions and/or irregularities during the tender processes, even in cases where the project is financed and executed under the procurement rules of prominent international financing institutions. EIC thus would like to note that the traditional design-bid-build method of contracting is associated with various potential disadvantages, for instance:

1. **The many interfaces in a traditional design-bid-build project** force all parties to adopt complex management procedures which increase the project costs with little added value.
2. **The knowledge and skills of the bidders play no role in the design stage** although early involvement of such expertise could significantly enhance the efficiency of the entire process.
3. **The conventional procurement method has an unfortunate bias towards awarding the project to the lowest tender even if it is unrealistic.** Experience shows that, even if a Contracting Authority is sufficiently sophisticated and diligent to appreciate the difference between a reasonably priced tender versus a low price tag, its own responsibilities towards superior officials, financiers (donors) and auditors will normally prevent it from sorting out abnormally low tenders.

Such practices have admittedly led to some frustration of donor efforts, with investment in capital works failing to produce satisfactory results and sustained service levels. Such flaws in the tender process are not only deterring many experienced companies from participating in the tender but have in fact subsidised insufficiently prepared infrastructure projects which are, at times, poorly connected to the existing networks. The European Court of Auditors investigated some years ago in the EC spending on infrastructure works in ACP countries and came to the conclusion that **both the EU and the ACP countries need to improve supervision of the implementation of works contracts financed by the European Development Fund** and must reduce the extent of divergences that were found between contractual expectations and their actual implementation.

Against this background, EIC would like to put forward the following concrete recommendations to the European donor community and the African partner countries for consideration:

EIC – associated with FIEC – represents infrastructure providers' associations from Belgium, Austria, Denmark, Finland, France, Germany, Greece, Iceland, Italy, Netherlands, Portugal, Spain, Sweden, Switzerland, Turkey and United Kingdom

Project preparation

EIC asks the European Commission to publish infrastructure tenders only if they are based on a realistic project budget indicating that the quality of both design and execution is a priority. It is of paramount importance that precise design studies, including state-of-the-art specifications and drawings, are produced. Careful project preparation necessitates *inter alia*:

- **The annexation of detailed permits, authorisations and licenses** listed by the Engineer and supplied by the Employer (and not by the Contractor);
- Quality, sustainability and environmental safety being the main concern over the **entire project life-cycle**;
- **Detailed surveys and studies of all the networks** to be included in the project under the responsibility of the Employer;
- The **materials** to be used in the project to be defined in the tender documents with further information where these materials shall come from. All permissions must be negotiated by the Employer with quarries owners and all relevant authorities and paid directly by him.

Prequalification / Postqualification

EIC asks the European Commission to establish coherence between the pre-qualification process for infrastructure projects and the EU's wider development policy objectives, for instance on corporate social responsibility, business ethics and the protection of the environment, to the extent that only those bidders may participate in the competition that can demonstrate their ability to comply with the European Union's environmental, ethical and social policy objectives. The following commitments and information should be requested from bidders:

- Minimum turnover of 4 times the tender price;
- Tender bond from a reputable international banking institution;
- Know-how transfer statements on the extent to which the local construction sector can participate in the contract, e.g. as Joint Venture partner, subcontractor or supplier;
- Association or subcontract with a local contractor for a minimum of 15% of the contract value;
- At least 80% of the workforce involved in the project shall be national or regional;
- Ownership of at least 75% of the heavy equipment considered necessary for the successful execution of the works with a copy of the registration document or purchase invoice;
- Copy of the original documents stating the bidder's setting-up or juridical status with the share structure;
- Plan Organisation of the Assurance Quality Program including social and environmental notice;
- Provide an acceptable company Code of Conduct;
- Quality assurance and environmental and social policy performance manuals;
- Balance Sheet Audit according to U.S. GAAP or IFRS rules in order to exclude companies benefiting directly or indirectly from state subsidies. Non-eligibility of public or state-owned companies that are not legally and financial autonomous and that are not administrated in accordance with the common rules of business law;
- In case of post-qualification the tender shall be submitted in 2 envelopes: A first one for administrative and technical references and a second one with the financial offer. The lowest of the qualified bidders through the first envelop shall be awarded the contract;

- Revision of the project budget in the light of recent price development;
- However, bidders should not be forced to identify a certain project manager for a certain project, but should be left with option to indicate several candidates with the same requested references.

Contract implementation

EIC suggests to the European Commission that some type of “grading system” be established where the performance of contractors working under MDB-financed contracts is recorded. During project implementation the Commission should supervise the progress of the works closely and insist on the following details:

- Conditions of Contract must reflect the latest industry standard and provide for a fair balance of risk. The best way to ensure good contracting practice is the mandatory use of an internationally accepted standard contract form, e.g. the *FIDIC MDB Harmonised Construction Contract*, which, *inter alia*, provides for the enforcement of dispute settlement decisions through a Dispute Board and International Arbitration;
- Transfer of the advance payment as a condition precedent to put the contract in force;
- Minimum of 80% of local or regional labour;
- Training included in the contract for electrical and mechanical works;
- Strong and independent Engineer;
- Single Consultant for design and supervision;
- Performance Bond to be issued by a local or international reputable bank;
- Monthly payments done within 2 months and default of payment after 2 months;
- Possibility to suspend or terminate the contract 1 month after default of payment by the Employer;
- Penalty of 1% of the contract value in case of default of payment;
- In case of termination of contract for default of payment, commitment from the donor institution to pay the works done by the contractor and certified by the Engineer;
- Arbitration procedures under an international recognised institution;
- Safety as a principle in the execution of the works with a safety plan , a safety engineer and obligation for all the workers to wear personal safety protections;
- Available budget extension in case of modified scope or unpredictable events
- Commitment that contractor will respect workers’ rights based on ILO core conventions.

Conclusion

European international contractors have a world-wide reputation for delivering quality infrastructure and thus prefer to become engaged in infrastructure tenders in which they can compete on their technical competence, i.e. on quality and sustainability. In this context, quality is referred to in its widest sense, encompassing not only technical but also environmental, ethical and social criteria.

Under the right incentives and circumstances, European contractors which are active in Africa are capable and prepared to:

1. Deliver quality infrastructure over the entire life-cycle of the project;
2. Employ and train the local workforce in accordance with internationally recognised labour standards;
3. Co-operate with local contractors and suppliers and transfer technical know-how, including their comprehensive experience on Public-Private Partnerships;
4. Respect and protect the environment through the recycling of waste and used materials and energy efficiency measures.

There are good examples where the presence of the European construction industry in Africa has lifted the local industry to a higher level. More positive examples could be realised within a short period of time because, when executing construction works overseas, **European companies are not “exporting” a large amount of their workforce, but rely only on a very small number of key business personnel to manage the company/project in collaboration with local partners and the local workforce.**

EIC submits that “Sustainable Infrastructure Procurement” starts with an efficient pre-qualification of applicants, followed by a tender process based on state-of-the-art documents and balanced contract conditions. To ensure the highest quality for the lowest price, however, the European Commission (and other European and multilateral donor agencies) should more often apply innovative tender procedures that allow qualified bidders to bring their expertise adequately into the competition. The Commission might wish to consider using so-called alternative procurement methods for pilot projects which would invite the private sector to compete for both price and quality over (part of) the life-cycle of the procured service, not simply for the lowest evaluated cost for the works. Such innovative procurement methods provide a strong incentive for the private partner to perform well over time which offers Value for Money for the Contracting Authority, the European donor community and, last but not least, the European taxpayer. Through “turnkey” or “design-build” tenders, Performance-Based Procurement and Public-Private Partnerships, added value can be achieved, such as:

1. The willingness to invest in the developing markets;
2. The willingness to transfer knowledge to local contractors;
3. The increased efficiency through early involvement of contractors in the initial phases of the project;
4. The ability to optimise life-cycle costing; and
5. The adherence to the principles of sustainable development, including the principle of corporate social responsibility.

EIC believes that, provided that such incentives are set by the European Commission, the participation of European international contractors in EDF tenders can be assured. We do not see any contradicting interests if large contracts were awarded – following a fair and transparent tender process, supervised by the European Commission – to foreign-owned contractors, as the internationally active European construction industry has the required skills and resources to manage the job properly and has a proven track-record to subcontract a high share of the works to local contractors which are then trained and promoted under its management and supervision.